

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5458 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

KODARBHAI MALABHAI MALIVAD

Versus

STATE OF GUJARAT

Appearance:

MR MUKESH R SHAH for Petitioners
GOVERNMENT PLEADER for Respondent No. 1
NOTICE SERVED for Respondent No. 2, 3, 4, 5

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. The prayer of the petitioner in this petition is for setting aside the order dated 5-4-1990 (Annexure-'E') and restoring the order dated 24-7-1989 (Annexure-'D') passed by the Collector, Panchmahals.

2. The impugned order Annexure-'E' has been passed by the Additional Chief Secretary, Revenue Department (Appeals), Government of Gujarat.

3. The impugned order (Annexure-'E') has been

examined. In the concluding paragraph no.3 of the impugned order, the Additional Chief Secretary, Revenue Department (Appeals) has highlighted the irregularities and infirmities in the order of the Collector contained in Annexure-'D'. In order to remove these irregularities and illegalities, the order of the Collector was quashed by the Additional Chief Secretary and the matter was remanded to the Collector for holding inquiry in accordance with the guidelines given in the body of the judgment rendered by the Additional Chief Secretary. The infirmities have been rightly highlighted in the impugned order, and in order to get a fair order the order of the Collector was set-aside and the matter was remanded with clear and cogent directions. Those directions can not be said to be illegal or imaginary.

4. The Additional Chief Secretary has rightly observed that the token fine of Rs.1=00 is nothing. He has also directed that inquiry should be made, whether any encroachment is made over the government land; and if so, its extent. It has also been directed that in case application for regularization of encroachment is made, it shall be considered and decided in accordance with the guidelines issued by the State Government and fine has to be realized from the petitioner in accordance with those guidelines. Consequently, the impugned order can not be said to be illegal. As such, no interference in this petition is required. I do not find any merit in this petition, which is hereby dismissed with no order as to costs.

November 16, 2000. [D.C. Srivastava, J.]

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